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THE STATUS OF THE PHILIPPINES

STATUS OF OTHER NON-CONTIGUOUS TERRITORY OF THE UNITED STATES.[1]

THE mainland included within the boundaries of the United States proper is now made up of States, and of the District of Columbia, specially created for the national capital. Outside of this compact territory are other units, not States, related in some manner to the national government.

Taking these up in order of nearness to the constitutional relation, there is Alaska for many years an unorganized but incorporated district or territory recently made into an organized territory of the United States.[2] Hawaii is likewise technically an incorporated organized territory.[3] Porto Rico differs from Alaska and Hawaii in that while substantially an organized territory it is not fully incorporated into the United States. The United States Supreme Court has said of the present status of Porto Rico:

> "It may be justly asserted that Porto Rico is a completely organized territory, although not a territory incorporated into the United States, and that there is no reason why Porto Rico should not be held to be such a territory."[4]

[1] See generally 38 Cyc. 192-197; Bryce, The American Commonwealth (Rev. Ed.) Vol. II, Ch. XCVII.

[2] See Willoughby, Territories and Dependencies of the United States, pp. 74-78; Coquitlam v. U. S., (1895) 163 U. S. 346, 41 L. Ed. 184; Rasmussen v. U. S., (1904) 197 U. S. 516, 49 L. Ed. 862; Interstate Commerce Commission v. Humboldt Steamship Co., (1911) 224 U. S. 474, 56 L. Ed. 849; Act of Congress, Aug. 24, 1912, 37 Stat. at L. Ch. 387, p. 512.

[3] See McKinley, Island Possessions of the United States, Ch. VII; Willoughby, Territories and Dependencies of the United States, pp. 60-70; 31 Stat. at L. Ch. 339; Hawaii v. Mankichi (1903) 190 U. S. 197, 47 L. Ed. 1016; Kawananakoa v. Polyblank (1906) 205 U. S. 349, 51 L. Ed. 834.

[4] New York, ex rel. Kopel v. Bingham (1908) 211 U. S. 468, 476, 53 L. Ed. 286. "Porto Rico is substantially a territory of the United States, over which all the general

laws of Congress properly applicable to territories, and not in terms locally inapplicable, are in full force and effect. * * * It would appear that Porto Rico is in fact more of an organized territory than some of the older jurisdictions, because it has what no other territory, save Hawaii, has; that is, a separate court of the United States, presumably to enforce United States laws as a part of its jurisdiction, wholly distinct from the local insular courts, which form a complete and ample local system in themselves." Peck Steamship Line v. New York, etc., Steamship Co., (1906) 2 Porto Rico Fed. 109, 129. See to same effect Elkins v. People, (1909) 5 Porto Rico Fed. 103, 111; 23 Op. Atty. Gen. U. S. 634; Municipality of Ponce v. Roman Catholic Church, (1907) 210 U. S. 296, 52 L. Ed. 1068; American Ry. v. Didricksen, (1913) 227 U. S. 145, 57 L. Ed. 456; Porto Rico v. Rosaly, (1913) 227 U. S. 270, 273, 57 L. Ed. 507. But the Federal Court of Porto Rico, in a later case, after stating that "the position of Porto Rico has been gradually evolved by a series of decisions" and admitting that "it is true that the Supreme Court has on more than one occasion referred to Porto Rico as, for some purposes, a territory," continued: "These decisions, however, must be taken not as establishing any particular rule which was not before the court, but as limited to the facts of the particular case. Porto Rico, apart from its not being incorporated into the United States, and being, unlike technical territories, an island at a distance from the mainland of the United States, is not organized on the basis of the technical territories heretofore known." The conclusion then was that: "Upon the whole, Porto Rico is much more in the nature of a dependent state external to the United States, and corresponding to what are called possessions of the British Crown rather than to a technical territory of the United States." Fajardo Sugar Co. v. Richardson, (1913) 6 Porto Rico Fed. 224.

"The organic act of 1913 provides that the government of the island shall be vested in an executive, consisting of a governor and six heads of administrative departments, a legislature of two houses—the executive council, and a house of delegates—and a system of courts of justice, consisting of a territorial court having the jurisdiction of the United States circuit and district courts, and a supreme court of Porto Rico, with such inferior courts as the local legislature may from time to time create. The most characteristic feature of this government is the manner in which the members of the executive council, or upper house, are selected, and the powers given to that body. The law thus provides that the executive council shall be composed of eleven members, six of whom shall be the heads of the administrative departments, all, like the Governor, to be appointed by the President by and with the advice and consent of the Senate, for a term of four years. Not less than five of the eleven members must be native Porto Ricans. The members of the lower house, thirty-five in number, are selected every two years by what is practically manhood suffrage. The result of these provisions is to establish about as even a balance of power in the legislature between the Americans and the natives of the island as can well be secured, though the veto power possessed by the governor throws the final determination as to what legislation shall be enacted into American hands. * * * Throughout the year the executive council also sits in what is called executive session for the transaction of a large amount of important business. These duties were conferred upon it, partly by the organic act, and partly by laws enacted by the insular legislature. Among the most important of these duties are those of acting as a public utilities commission for the granting of all franchises and concessions of a public character, and of prescribing the rates and conditions of service that shall be observed by public service corporations; of administering the election laws; of acting as the approving body in respect to the sale of bonds by municipalities, or the granting of loans to these bodies from the insular treasury; of authorizing certain readjustments in the budget as enacted by the legislature; and of approving nominations to office made by the governor. * * * Congress gave the government full power to take all action necessary for the management of the local affairs of the island, subject only to the right of Congress to disapprove of legislation if it saw fit. It likewise relieved it from all administrative control from Washington further than is contained in the power of the President to remove persons appointed by him for cause, and in the obligation of the governor and the heads of departments to make annual reports regarding the manner in which they have discharged their duties. * * * As regards representation in Con-

Passing from the territories we find Cuba a foreign country, a free and independent Republic with a written constitution, but in effect a protectorate of the United States.[5] The Isle of Pines is also a "foreign country," *de facto* under the jurisdiction of the Republic of Cuba.[6]

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gress, Porto Rico has been treated as a territory, its citizens being directed to elect every two years a commissioner or delegate who has a seat in the House of Representatives, with the right to be heard but not to vote." W. F. Willoughby, Cyc. of American Government, Vol. II, pp. 758-760. See further Rowe, The United States and Porto Rico; McKinley, Island Possessions of the United States, Chs. IV, V; Willoughby, Territories and Dependencies of the United States, Chs. IV, V; The Insular Cases, (1901) 182 U. S. 1, 45 L. Ed. 1041.

[5] Elbert J. Benton, International Law and Diplomacy of the Spanish-American War, pp. 288-291; C. F. Randolph, 1 Columbia Law Review, 352; Colquhoun, Greater America, pp. 267, 268; McKinley, Island Possessions of the United States, Ch. III; Neely v. Henkel, (1900) 180 U. S. 109, 45 L. Ed. 448; Goodyear Tire and Rubber Co. v. Rubber Tire Wheel Co., (1908) 164 Fed. 869. A provision, known as the Platt Amendment, was inserted in the army appropriation bill of March 2, 1901, directing the president to leave the control of the island to its people as soon as a government should be established under a constitution which defined the future relations with the United States substantially as follows:

"I. That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

"II. That the said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of the government, shall be inadequate.

"III. That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

"IV. That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

"V. That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island. * * *

"VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereof being left to future adjustment by treaty.

"VII. That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points to be agreed upon with the President of the United States.

"VIII. That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States."

The convention adopted the Platt amendment, June 12, 1901, and added it as an appendix to the constitution. The treaty embodying the provisions of the Platt amendment was concluded May 22, 1903, and ratifications exchanged July 1, 1904. 31 Stat. at L. 898; Foreign Relations, 1904, p. 243; John Halladay Latané, America as a World Power, pp. 179, 180, 181, 189.

[6] Pearcy v. Stranahan, (1906) 205 U. S. 257, 51 L. Ed. 793.

Samoa, Guam, and the Panama Canal Zone are held for special purposes. The portion of Samoa, principally the Island of Tutuila, assigned by treaty with Great Britain and Germany to the United States, is a naval station with all governmental powers in the hands of the commandant.[7] Guam similarly is under military government with the naval officer in command as chief executive in complete control.[8] The Panama Canal Zone is a specially organized government for the Panama Canal.[9]

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[7] Willoughby, Territories and Dependencies of the United States, p. 290-302. The system of local government erected by Commander Tilley and his successors, has been based upon the family and tribal organizations already existing among the Samoans. Concerning his governmental policy Commander Tilley said: "I considered that the best way to govern these people was to let them, as far as possible, govern themselves, by continuing their good and time-honoured customs and gradually abolishing the bad ones. The Samoans are still in the patriarchal state; the head of the household is supreme ruler of his own little family, and these chiefs in turn form a council which governs each village. Each town is practically independent of the others, though there is a parliament or 'fono' for every district. * * * I followed the plan which has proved so successful in Fiji of appointing native chiefs as local magistrates or governors in each district." McKinley, Island Possessions of the United States, pp. 269-276.

[8] Forbes-Lindsay, America's Insular Possessions, Vol. I, pp. 225, 226; McKinley, Island Possessions of the United States, pp. 276-279; Willoughby, Territories and Dependencies of the United States, pp. 302, 303. Ex. Or. of the President of Dec. 23, 1898, placing Guam under the control of the Department of the Navy and the "Instructions for the military commander of the Island of Guam" issued by the Secretary of the Navy on Jan. 12, 1899, are quoted in part in Duarte v. Dade, (1915) XIII O. G. 2006. "For administrative purposes the island is divided into four counties, each represented by a resident native commissioner appointed by the Governor. His powers are confined to police jurisdiction with authority to try, as Justice-of-the-Peace, a certain class of criminal cases of minor gravity. The more important cases are tried in the Island Court, also presided over by a native judge who sits in Agana. Appeals lie to this Court from the Justices' Court and, in certain cases, from the Island Court to the Court of Appeals of the Island. The Island Court is the same as existed under Spanish domination, under the title of Court of First Instance, and is similar in jurisdiction to the present courts of that name in the Philippines. The Court of Appeals, as at present constituted, is a creation of my own. Under the Spanish, appeals from the Court of First Instance in Guam lay to the *Audiencia* in Manila,—Guam then belonging to the political division of the *Filipinas*. With the entire independence of Guam under the United States, and in the absence of all regulation by law of Congress, the earlier American Governors constituted a Supreme Court to consist of the Governor himself. The time had come and the material was available to form a Court of natives, five in all with an Americanized Spaniard (living permanently in the island and married to a native), as Chief Justice. This has now been in successful operation for about six years. * * * The Spanish law prevails, modified by the decrees, not numerous, of the several Governors. Congress has never legislated for Guam except to include in the appropriation bills certain items for the Naval Station. The President, in 1899, issued a short Executive Order covering the Customs Tariff for the island and in 1901 another defining the accountability for insular funds. The last law regulating the tariff between the Philippine Islands and the United States included Guam. These are the only legal restraints emanating from the Government on the action of the Island administrator. Neither has the Navy Department issued special regulations to limit or control or advise his course. He is bound to observe the Naval Regulations but, as a matter of fact, he is the most independent official I know of and possesses, practically, the power of a benevolent despot over an absolutely helpless people. * * * In addition to the Judges the other native officials

The minor possessions of the United States, Wake Island, Midway Islands, Howland Island, Baker Island, and the Guano Islands, are practically uninhabited.

The foregoing impresses one with the variety of relationships within and to the United States—States; a district for the capital; incorporated, organized territories; an unincorporated, organized territory; a virtual protectorate; naval governments; a canal government; and no government at all. Large as is the list, the Philippines are included in no division.

WHETHER THE PHILIPPINES ARE A FOREIGN COUNTRY.

Chief Justice MARSHALL and Justice STORY have defined a foreign country as one exclusively within the sovereignty of a foreign nation, and without the sovereignty of the United States.[10] Applied in the *Insular Cases*[11] Porto Rico was held not to be a foreign country after the cession.

In the *Diamond Rings* case[12] an identical question arose relative to the Philippines. The United States Supreme Court found no distinction in this particular between the situation of Porto Rico and the Philippines. After the ratification of the treaty of peace, the Court said, the Philippines "ceased to be a foreign country." The Attorney-General of the United States later rendered an opinion to the same effect.[13]

The Philippine Islands are not a foreign country.

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are the Island Attorney, who is also the Prosecuting Officer, Registrar of Lands, Deeds and Titles, and the Custodian of the Commercial Register; the Island Treasurer and assistants; the Clerk of the Courts; the Warden of the jail, who is also the County Commissioner of Agana County. The Naval Surgeons are the Sanitary Inspectors. The Commissioner of Schools is an American, as is the Collector of Customs. The schoolteachers are both Americans and natives of both sexes. The island officials, and all public improvements not made for the efficiency of the Naval Station as such, are paid from the revenues of the Island." Address of Commodore George L. Dyer, before the Lake Mohonk Conference, Oct. 21, 1910, pp. 156, 157.

[9] The Panama Canal Zone was acquired from the Republic of Panama by treaty of November 18, 1903, 33 Stat. at L. 2234. The title of the United States thereto was judicially sustained in the case of Wilson v. Shaw, (1909) 204 U. S. 24, 51 L. Ed. 351. The Zone is now governed by Act of Congress of August 24, 1912. See Willoughby, Territories and Dependencies of the United States, pp. 303-306; Albert Bushnell Hart, Cyclopedia of American Government, Vol I, pp. 218, 219.

[10] The Adventure, (1812) 1 Brock. 235, Fed. Cas. No. 93; The Eliza, (1813) 2 Gall. 4, Fed. Cas. No. 4346; Taber v. U. S. (1839) 1 Story 1, Fed. Cas. No. 13, 722; De Lima v. Bidwell, (1901) 182 U. S. 1, 180, 45 L. Ed. 1047.

[11] De Lima v. Bidwell, (1901) 182 U. S. 1, 180, 45 L. Ed. 1047.

[12] (1901) 183 U. S. 176, 46 L. Ed. 138. Followed in U. S. v. Heinszen & Co., (1906) 206 U. S. 370, 51 L. Ed. 1098, and in Faber v. U. S. (1911) 221 U. S. 649, 55 L. Ed. 897.

[13] "* * * The question is, whether the Philippine Islands are a 'foreign country' within the meaning of said Section 14. I am of the opinion that they are not. * * *

"That the territory ceded to the United States by the treaty with Spain is not 'foreign' territory, within the meaning of the tariff laws, was conclusively settled by the Supreme

WHETHER SOVEREIGN OR SEMI-SOVEREIGN

Although not a foreign country, we find the Government of the Philippine Islands exercising powers which, prior to the Spanish-American War, had vested either in foreign states or in the Federal Government exclusively. To particularize, the Government of the Philippine Islands levied a customs tariff on goods, wares, and merchandise coming from the United States into the Philippines; its own exports entering the United States were likewise taxed; it still has separate tariff and internal revenue laws; it issues its own currency; it has a distinct postage and controls its own postal service; it has extradition rights; it has entered into postal-money-order agreements and parcel-post conventions with other governments.[14] Hon. Charles E. MAGOON, in a scholarly address before the Patria Club of the city of New York, on February 19, 1904, speaking on the subject "What Followed the Flag in the Philippines," said:

> "No integral or segregated portion of the territory subject to the sovereignty of the United States is today exercising by itself and for itself so many of the powers of sovereignty as is the Philippine Archipelago. *It is well-nigh a sovereign nation,* lacking complete independence in that it is not at liberty to exercise its judgment and discretion in matters affecting its relations with foreign governments, and that its exercises of legislative authority are subject to the disapproval of Congress. It is accurate and exact to say

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Court of the United States in De Lima v. Bidwell, 182 U. S. 1, 196. By the tariff act in force when the cession was made it was provided that 'there shall be levied, collected and paid upon all articles imported from foreign countries' certain duties therein specified. The question was whether certain cargoes of sugar shipped from Porto Rico were subject to duty; and the Court held, as expressed in the syllabus, that 'with the ratification of the treaty of peace between the United States and Spain, April 11, 1899, the Islands of Porto Rico ceased to be a 'foreign country' within the meaning of the tariff laws." XXVIII Ops. 422. Also same holding in XXV Ops. 179.

[14] 4 Op. Atty. Gen. P. I., 205, 377. The power to negotiate and conclude money-order and parcel-post conventions or agreements with foreign governments, which shall cover the mail and money-order service between the Philippine Islands and such foreign governments, resides, not in the Postmaster General, but in the Government of the Philippine Islands. 29 Op. Atty. Gen. U. S. 380. It should be remembered, in this connection, that the Universal Postal Money Convention was between "the United States of America and the island possessions of the United States of America" and other countries. It has been held that under its present status the Government of the Philippine Islands has no treaty-making powers. 5 Op. Atty. Gen. P. I. 326; and the exhaustive thesis to this effect of Juan L. Luna entitled "Treaty-Making Powers of the Government of the Philippine Islands under Its Present Status," submitted to the College of Law, University of the Philippines, for the degree of Bachelor of Laws. In accord U. S. v. Rauscher, (1886) 119 U. S. 407, 30 L. Ed. 425; U. S. v. Arjona, (1887) 120 U. S. 479, 30 L. Ed. 728; Butler, Treaty-Making Power of the United States, §§ 121, 133.

> that the people of the Philippines govern themselves, and that the only political right enjoyed by citizens of the States and denied to them is the right to participate in the government of the States of the Union."

An unbroken line of opinions in a similar view showing the autonomous nature of the Philippine Government can be found.[15]

ARE THE PHILIPPINES SOVEREIGN?

Sovereignty may be said to be the union and exercise of all human power possessed in a state. Mr. John AUSTIN, an eminent authority upon the science of jurisprudence, says:

> "The superiority, which is styled sovereignty, and the independent political society which sovereignty implies, is distinguished from other superiority, and from other society, by the following marks or characters:—
>
> "1. The *bulk* of the given society are in a habit of obedience or submission to a *determinate* and *common* superior, let that common superior be a certain individual, person, or a certain body or aggregrate of individual persons.
>
> "2. That certain individual, or that certain body of individuals, is not in a habit of obedience to a determinate human superior."[16]

Some writers use sovereignty and independence as practically synonymous. International law, however, recognizes semi-sovereign states[17] maintaining international relations but not altogether independent, because a paramount state called the suzerain can control their foreign affairs. Sovereignty assumes two aspects: External, as independent of all control from without; Internal, as paramount over all action within.[18]

The United States as an independent state must be presumed to have retained sovereignty over all places subject to its jurisdiction. In fact, the United States Supreme Court has held that during

[15] See Arellano, C. J., in In re Patterson, (1902) 1 Phil. 93; Johnson, J., in Barcelon v. Baker, (1905) 5 Phil. 87; Willard J., in Gaspar v. Molina, (1905) 5 Phil. 197; Elliott, J., in U. S. v. Bull, (1910) 15 Phil. 7; Trent, J., in Severino v. Governor-General, (1910) 16 Phil. 366; Johnson, J., in Forbes v. Chuco Tiaco, (1910) 16 Phil. 534; Villamor, Attorney-General, opinion June 8, 1910, 5 Op. Atty. Gen. P. I. 511. And for Porto Rico, In re Neagle, (1914) 21 Porto Rico, 339.

[16] Austin, The Province of Jurisprudence Determined, Vol. I, p. 170; Jameson, Constitutional Conventions, (4th Ed.) p. 17. See further, Story on the Constitution, (5th Ed.) § 207; 36 Cyc. 516, citing cases.

[17] Revier, *Principles du Droit des Gens;* Calvo, *Le Droit Int.;* 1 Moore, International Law Digest, pp. 18-20, 27.

[18] Holland's Jurisprudence, (11th Ed.) p. 50.

the terms of pupilage, territories and dependencies do not constitute a sovereign power.[19] The same court, having in mind the title acquired by the Treaty of Paris, has further said that the Philippines "came under the complete and absolute sovereignty and dominion of the United States."[20] Again the court said that "The jurisdiction and authority of the United States" over the Philippines "for all legitimate purposes of government, is paramount."[21]

Such conclusions are reinforced when it is recalled that while the Philippine Government has a large and peculiar authority not possessed by any State or territory of the United States, nevertheless it lacks certain attributes of an independent state. It has not the right, for example, to have an army and a navy, to declare war, or to enter into strictly international relations. "The only government of this country which other nations recognize or treat with is the government of the Union * * *"[22] Even those functions which apparently bring the Islands close to sovereignty are regulated or permitted by American law. Thus the power which the government of the Philippine Islands has in respect to a local coinage is derived from an express act of Congress, which retains this exclusive prerogative of sovereignty.[23] The Philippines could only have such sovereign rights after they are made independent, since, at present, such rights are essential attributes of American sovereignty expressly delegated to the national government and enumerated in the Constitution. Always is there the transcendent power of Congress and the President of the United States, which, even when dormant, indicates a superior right to annul or modify any action of the local government or to withdraw any privilege once granted. "Mother-countries may concede to colonies (dependencies) the most complete autonomy of government, and reserve to themselves a control of so slight and negative a character as to make its exercise a rare occurrence; yet, so long as such control exists, the sovereignty of the mother-country is not released, and such colony is therefore to be considered as possessing no independent political powers."[24]

[19] Snow v. U. S., (1873) 18 Wall. 317, 21 L. Ed. 784. See also Talbot v. Silver Bow County Commissioners, (1891) 139 U. S. 438, 35 L. Ed. 210; Dorr v. U. S., (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706.

[20] The Diamond Rings, (1901) 183 U. S. 176, 179, 46 L. Ed. 138. To same effect, Dorr v. U. S., (1904) 195 U. S. 138, 49 L. Ed. 128; Rasmussen v. U. S., (1905) 197 U. S. 516, 49 L. Ed. 862; Carino v. U. S., (1909) 212 U. S. 449, 53 L. Ed. 594; 38 Cyc. 196, citing cases.

[21] Grafton v. U. S., (1907) 206 U. S. 333, 354, 51 L. Ed. 1084, 11 Phil. 776, 798.

[22] Fong Yue Ting v. U. S., (1893) 149 U. S. 698, 37 L. Ed. 905.

[23] Ling Su Fan v. U. S., (1910) 218 U. S. 302, 54 L. Ed. 1049. See also § 10, Jones Bill.

[24] Willoughby, The American Constitutional System, p. 6. See to same effect Butler, Treaty-Making Power of the United States, § 121 and notes.

Testing the status of the Philippines by our definition of "state", we find this resultant proposition: The Philippine Islands are not a sovereign or semi-sovereign state, because, while they may be composed of a people permanently occupying a fixed territory bound together by common laws, habits, and customs into one body politic, yet they do not exercise through the medium of an organized government independent sovereignty and control over all persons and things within their boundaries and are not capable of making war and peace and of entering into international relations with the other communities of the world.[25] But as a proviso that the Philippine Islands have internal sovereignty and enjoy substantially all the powers possessed by a State of the American Union.[26]

WHETHER A STATE OR TERRITORY OF THE UNITED STATES.

If not a foreign country and if not sovereign or semi-sovereign, are the Philippines a State or territory of the United States?

No argument is needed to show the negative of the question—the Islands are neither a State nor an organized, incorporated territory.[27] The Philippines, it is true, have the form of government of such a state or territory and possess many of their attributes, but are not admitted to this relationship. Just as the *Diamond Rings* case running along parallel lines with one of the *Insular Cases* found the Philippines not to be a foreign country, so the *Dorr* case[28] equivalent to another *Insular Case* applied basic constitutional principles to the point of whether or not the Philippines were incorporated into the United States.

The *Dorr* case presented the question whether, in the absence of a statute of Congress expressly conferring the right, the sixth amendment, concerning trial by jury, is a necessary incident of judicial procedure in the Philippine Islands and controlling on Congress, where demand for trial by that method has been made by the accused and denied by the courts established in the Islands. The opinion has special weight, for it was delivered by Mr. Justice DAY who had been Secretary of State during the Spanish-American War

[25] 1 Moore, International Law Digest, p. 14; Phillimore, Int Law, (3rd Ed.) Vol. I, p. 81.

[26] Porto Rico v. Rosaly, (1913) 227 U. S. 270, 57 L. Ed. 507; In re Neagle, (1914) 21 Porto Rico 339.

[27] "The Philippine Islands is not a State." U. S. v. Bull, (1910) 15 Phil. 7, 20. Nor an organized territory. 23 Op. Atty. Gen. U. S. 634. See also Chun Toy v. Insular Collector of Customs, (1915) XIII O. G. 2206.

[28] (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706. The opinion of the Supreme Court of the Philippines in the same case (1903) 2 Phil. 269, is well reasoned and illuminating. See further In re Allen, (1903) 2 Phil. 630.

and President of the American Peace Commission. He affirmed the right of the United States to acquire territory and the right of Congress to govern the acquired territory subject only "to such constitutional restrictions upon the powers of that body as are applicable to the situation." The court then concluded that Congress is not required "to enact for ceded territory, not made a part of the United States by Congressional action, a system of laws which shall include the right of trial by jury, and that the Constitution does not, without legislation and of its own force, carry such right to territory so situated."

The Supreme Court of the United States shortly thereafter elucidated the *Dorr* case still further in a case concerning the status of Alaska.[29] Mr. Justice WHITE (the present Chief Justice) in the opinion said that in the *Dorr* case

> "It was decided that, whilst by the treaty with Spain the Philippine Islands had come under the sovereignty of the United States and were subject to its control as a dependency or possession, those islands had not been incorporated into the United States as a part thereof, and therefore Congress, in legislating concerning them, was subject only to the provisions of the Constitution applicable to territory occupying that relation. The power to acquire territory without incorporating it into the United States as an integral part thereof, * * * * was sustained upon the reasoning expounded in the opinion of three, if not of four, of the judges who concurred in the judgment in *Downes* v. *Bidwell,* that reasoning being in effect adopted in the *Dorr* case as the basis of the ruling there made."

After quoting with approval from the opinion in the *Dorr* case, the court continued:

> "We are brought, then, to determine whether Alaska has been incorporated into the United States as a part thereof, or is simply held, as the Philippine Islands are held, under the sovereignty of the United States as a possession or dependency. Concerning the test to be applied to determine whether in a particular case acquired territory has been incorporated into and forms a part of the United States, we do not deem it necessary to review the general subject, again contenting ourselves by quoting a brief passage from the

[29] Rasmussen v. U. S., (1905) 197 U. S. 516, 49 L. Ed. 862.

opinion in *Dorr* v. *United States,* summing up the reasons which controlled in determining that the Philippine Islands were not incorporated."

These conclusions are substantiated by facts previously learned: The treaty of peace did not engage to incorporate the Philippines or its inhabitants into the United States. Congress, to whom the political status was left for determination, did not extend the laws and Constitution of the United States to the Islands.

Possibly we should have before stated that in a general sense the Philippine Islands are a Territory. But recently[29a] Attorney-General GREGORY, reviewing the question, felt constrained to reverse an opinion of Attorney-General KNOX[29b] and to hold that "While, like Porto Rico, the Philippine Islands are not incorporated in the United States, they clearly are territory of the United States, and to the extent that Congress has assumed to legislate for them, they have been granted a form of Territorial Government and to this extent are a territory." Although in the opinion no distinction is drawn between an "organized" or "unorganized", "incorporated" or "unincorporated" territory, it can be inferred therefrom that the Philippine Islands should constitutionally be considered to be an unincorporated territory.

The Philippine Islands have not been incorporated into the United States as a part thereof; i. e., are not a State or an organized, incorporated territory. The Philippines are an unincorporated territory.

WHETHER A COLONY, DEPENDENCY, OR POSSESSION.

If not a foreign country, if not sovereign or semi-sovereign, and if not a State or an organized, incorporated territory, are the Philippines a colony, dependency, or possession of the United States?

The terms "colony", "dependency", and "possession" can be distinguished. A colony is a dependent political community settled or prospectively to be settled to a considerable degree by the citizens of its dominant state.[30] A dependency is a territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe.[31] A possession

[29a] October 28, 1915.

[29b] 24 Op. Atty. Gen. U. S. 549.

[30] Keller, Colonization, pp. 1, 2,; Law Dictionaries; U. S. v. The Nancy, (1814) 3 Wash. 281, 286, 27 Fed. Cas. No. 15,854.

[31] Law Dictionaries; U. S. v. The Nancy, Id. Holt, Introduction to the Study of Government, Ch. X, gives two types of Dependencies, Colonial and Direct.

is much the same as a dependency, unless it be that possession implies title by conquest. A colony differs from a dependency or a possession because settled by citizens of the parent state, while a dependency or possession is mainly inhabited by people foreign in blood and habits.

WASHINGTON, Circuit Justice, explains the phrases as follows:

> "The second position which arises out of the view before taken, of the different acts of Congress on this subject, is, that the non-importation law of March 1, 1809, which interdicted commerce with the *possessions,* as well as with the *colonies and dependencies* of Great Britain, was revived only against that nation, her colonies, and dependencies; and this conducts us to the third and most difficult question in the cause. Is Malta to be considered as a dependency of Great Britain? In deciding this question, the court has not had an opportunity to derive much information from books. The precise meaning of the world '*dependency*', as it is used by Congress, in the law under consideration, cannot be ascertained with any degree of certainty. It may, however, be safely concluded, that it imports some civil and political relation, which one country bears to another, as its superior, *different from that of a mere possession.* The introduction of the words 'actual possession,' into the act of March 1, 1809, and the omission of them in that of May 1, 1810, afford strong evidence, that Congress did not consider a dependency, as synonymous with a possession; but, on the contrary, the difference was so material, as to induce Congress to sanction a trade with the former, which had been previously interdicted with both. As soon as this distinction is established, the mind of a legal man is irresistibly led to annex to the one, the idea of possession, accompanied by title, in opposition to a mere naked possession, obtained either by force, and against right, or rightfully acquired, and wrongfully withheld from the legal sovereign; and this, the court is strongly inclined to think, is *the true definition of a dependency;—that is, a territory distinct from the country in which the supreme sovereign power resides, but belonging rightfully to it, and subject to the laws and regulations which the sovereign may think proper to prescribe. It is not a colony, because it is not settled by the citizens of the sovereign, or mother state;* but it is lawfully acquired or held, and the people are as much subjects of the state which has thus obtained it, as if they had

> been born in the principal state, and had emigrated to the dependent territory. The usual ways by which such acquisitions are made, are by purchase, or by conquest in war. The first, being made with the consent of the sovereign, is permanent and indefeasible; but the latter is subject to uncertainty, and liable to restoration to the sovereign, from whom it was taken, unless confirmed by a treaty of peace, or unless it be voluntarily relinquished by such sovereign. When so confirmed, or relinquished, and not before, it seems to be, in the true sense of the word, a dependency; that is, it is durably incorporated into the dominions of the conqueror, and becomes a part of his territory, as to government and national right."[32]

The President, the Congress, and the United States Supreme Court have never spoken of Porto Rico and the Philippine Islands as colonies. They can not be properly so designated. The courts especially have always described the Philippines as a dependency or possession.[33]

WHETHER PART OF THE UNITED STATES IN AN INTERNATIONAL SENSE.

If not a foreign country, if not sovereign or semi-sovereign, if not a State or an organized, incorporated territory, and if not a colony, are the Philippines a part of the United States in an international sense?

The term "United States"[34] has two meanings. It is first, strictly speaking, but the union of the separate States under a common constitution.[35] On the other hand, it has a broad signification in dealing with foreign sovereignties and then includes all territory subject to the jurisdiction of the Federal Government. Chief Justice MARSHALL said that "It is the name given to our great republic which is composed of States and territories. The District of Co-

[32] U. S. v. The Nancy, (1814) 3 Wash. 281, 286, 27 Fed. Cas. No. 15,854.

[33] See Downes v. Bidwell, (1901) 182 U. S. 244, 45 L. Ed. 1088; Dorr v. U. S., (1904) 195 U. S. 138, 49 L. Ed. 128, 11 Phil. 706; Rasmussen v. U. S., (1905) 197 U. S. 516, 49 L. Ed. 862; Gardiner, Our Right to Acquire and Hold Foreign Territory, p. 20. "United States and its Possessions," as used in the U. S. Tariff Laws, construed in Uy Chaco v. Collector of Customs, (1913) 24 Phil. 548. "Possession" or "Insular Possession" used in a number of Acts of Congress, e. g., Act of June 13, 1906, § 12; Act, Feb. 20, 1907; U. S. Passport Rule of Sept. 12, 1903, etc.

[34] See generally C. C. Langdell, The Status of our new Territories, XII Harvard Law Review, (1899), p. 365; 5 Op. Atty. Gen. P. I. 622.

[35] Texas v. White, (1869) 10 Wall. 700, 19 L. Ed. 227.

lumbia or the territory west of the Missouri is not less within the United States than Maryland or Pennsylvania."[36]

Statutes of Congress have construed the phrase "United States" to embrace all waters, territory or other places subject to the jurisdiction thereof. A late case[37] has held the Philippines to be a part of the United States within the meaning of a commercial convention with Cuba. The Magistrate's decision in the *Sotto* case at Hong-kong, August 16, 1913, looked upon the Philippines as a constituent part of the United States. The idea of American sovereignty would necessarily refute any view, relative to relations with foreign governments, which permitted a disregard of paramount American authority, as unsafe and undignified.

The Philippines are a part of the United States in an international sense.[38]

THE CASE OF THE UNITED STATES V. BULL.

In the case of *United States* v. *Bull*[39] the Supreme Court of the Philippine Islands, considering "the importance of the question" presented, "after much discussion and considerable diversity of opinion," established "certain applicable constitutional doctrines." In reality the opinion by Mr. Justice ELLIOTT constitutes a veritable text book in the most approved style on certain subjects of Philippine Government. Therein, after enunciating fundamental, constitutional conceptions, tracing the history of the Government, and analyzing its functions, it was said of the status of the Philippines:

> "This Government of the Philippine Islands is not a State or a Territory, although its form and organization somewhat resembles that of both. It stands outside of the constitutional relation which unites the States and Territories into the Union. *The authority for its creation and maintenance* is derived from the Constitution of the United States, which, however, operates on the President and Congress, and not directly on the Philippine Government. It is the creation of the United States, acting through the President and Con-

[36] Loughborough v. Blake, (1820) 5 Wheat. 317, 319, 5 L. Ed. 98; De Geofrey v. Riggs, (1890) 133 U. S. 258, 33 L. Ed. 642; Downes v. Bidwell, (1901) 182 U. S. 1, 262, 45 L. Ed. 1088. Mr. Butler sums up the difference in a single, well-balanced sentence—"As to State matters and internal affairs, the United States *are* a federation, as to general matters affecting foreign affairs or territory held in common, the United States *is* a nation." Treaty-Making Power of the United States, Vol. I, pp. 27, 28.

[37] Faber v. U. S., (1911) 221 U. S. 649, 55 L. Ed. 897.

[38] See C. F. Randolph, Law and Policy of Annexation, pp. 12, 13.

[39] (1910) 15 Phil. 7.

gress, both deriving power from the same source, but from different parts thereof. For its powers and the limitations thereon the Government of the Philippines looked to the orders of the President before Congress acted and the Acts of Congress after it assumed control. Its organic laws are derived from the formally and legally expressed will of the President and Congress, instead of the popular sovereign constituency which lies back of American constitutions. The power to legislate upon any subject relating to the Philippines is primarily in Congress, and when it exercises such power its act is from the view point of the Philippines the legal equivalent of an amendment of a constitution in the United States.

"Within the limits of its authority the Government of the Philippines is a complete governmental organism with executive, legislative, and judicial departments exercising the functions commonly assigned to such departments."

While this opinion went to the extreme in a judicial endeavor to sanction legislative authority and to set up a *quasi*-sovereign government, it was not appealed to the United States Supreme Court and is controlling.[40] The same result was attained in two later decisions affecting the executive power.[41]

WHETHER LEGALLY ORGANIZED.

The Government of the Philippine Islands rests on a valid title under international law passed by Spain to the United States, and a constitutional foundation of right of acquisition and government. The United States had the right to acquire the Philippines by treaty. The President had the right to institute military rule merging into *quasi*-civil administration.[42] Congress had the right to confirm Presidential action, to organize a temporary government, and later, to create a local organization, and to delegate legislative authority to such agencies as it selected.

In the case where the legal constitution of the courts of the islands was challenged, Mr. Justice MORELAND said: "That the government here in these Islands * * * has been legally and properly constituted by Congress we do not doubt."[43]

[40] But compare with In re Guarina, (1913) 24 Phil. 37.

[41] Severino v. Governor-General, (1910) 16 Phil. 366, and Forbes v. Chuco Tiaco, (1910) 16 Phil. 534.

[42] Duarte v. Dade, (1915) XIII O. G. 2006.

[43] U. S. v. Beecham, (1910) 16 Phil. 272, 299, citing cases. See also the Insular Cases; Binns v. U. S., (1904) 194 U. S. 486, 48 L. Ed. 1087; Dorr v. U. S., (1904) 195

WHETHER FILIPINOS ARE ALIENS, SUBJECTS, OR CITIZENS.

In addition to ascertaining the status of the Philippines as an entity, it is well to note the status of the Filipino as an individual.

Are the Filipinos aliens? An early opinion of the Acting Attorney-General of the United States loosely mentions them as such.[44] But all later opinions of the Attorney-General of the United States and of the Attorney-General of the Philippines have held the inhabitants of the Philippines not to be aliens.[45] This must be so, if the provisions of the Treaty of Paris transferring the sovereignty of Spain over the Islands and their people to the United States, and if the decisions of the Supreme Court of the United States to the effect that Porto Rico and the Philippines are not foreign countries but are parts of the United States in an international sense, are to be given effect. The native inhabitants' relations with their former sovereign were dissolved by cession. They ceased to be Spanish subjects. The allegiance of the Filipinos became due to the United States.[46]

The Chief Justice in a leading case concerning the question of whether a Porto Rican was an alien within the meaning of the Contract Labor Law of 1891, said:

> "We think it clear that the act relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof; and that citizens of Porto Rico, whose permanent allegiance is due to the United States; who live in the peace of the dominion of the United States; the organic law of whose domicil was enacted by the United States, and is enforced through officials sworn to support the Constitution of the United

U. S. 138, 49 L. Ed. 128, 11 Phil. 706; U. S. v. Heinszen & Co., (1907) 206 U. S. 370, 51 L. Ed. 1098.

[44] 22 Op. Atty. Gen. U. S. 495, May 29, 1899.

[45] See Op. Atty. Gen. P. I., April 1, 1912, holding that "the United States Contract Labor Law deals with aliens; Filipinos are not aliens; the Act of Congress of February 20, 1907, concerns 'the greater United States'; the Philippine Islands are included therein. In my opinion, therefore, the taking of Filipinos from these islands to San Francisco to be used as laborers in connection with the Philippines exhibit at the Panama-Pacific International Exposition would not violate any provision of the United States Contract Labor Law." And 25 Op. Atty. Gen. U. S. 131, where Attorney-General Knox held that citizens of the Philippine Islands coming from foreign parts are not required to pay the head-tax prescribed by section 1 of the Act of March 3, 1903.

[46] American Insular Co. v. Canter, (1828) 1 Pet. 511, 7 L. Ed. 242, generally; Gonzalez v. Williams, (1904) 192 U. S. 1, 48 L. Ed. 317, as to Porto Ricans; the Diamond Rings, (1901) 183 U. S. 176, 46 L. Ed. 138, as to Filipinos.

> States,—are not 'aliens', and upon their arrival by water at the ports of our mainland are not 'alien immigrants', within the intent and meaning of the Act of 1891."[47]

Are the Filipinos citizens of the United States? The term "citizen" has different meanings in municipal and international law. Without venturing into fine distinctions, let us take its strict definition under American law, to be a member of the sovereign people entitled to full civil and political rights.[48] Citizenship originates not with man but with the government. In the United States it can only be acquired by birth or naturalization.

We find no such collective naturalization[49] accomplished for the Filipinos as was granted to the inhabitants of ceded territory until the Spanish War by treaty, political incorporation, and extension of the Constitution. Article IX of the Treaty of Paris left the civil rights and political status of the native inhabitants to be determined by Congress. This, said the United States Supreme Court, "is an implied denial of the rights of the inhabitants (of Porto Rico and the Philippines) to American citizenship until Congress by further action shall signify its assent thereto."[50] And Congress in the Philippine Bill[51] did not confer Federal citizenship but declared them to be "citizens of the Philippine Islands." Possibly also the Filipinos could not fulfill the requirements of the fourteenth amendment to the Constitution defining citizens of the United States, for, while they are subject to the jurisdiction of the United States, they are not necessarily "persons born or naturalized in the United States."[52] Provision has been made for the Filipinos to become citizens by complying with the provisions of section 30 of the Naturalization Law of June 29, 1906, thus proving that before doing so they are not considered to be citizens.

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[47] Gonzales v. Williams, (1904) 192 U. S. 1, 48 L. Ed. 317. See also American R. Co. v. Didricksen, (1913) 227 U. S. 145, 57 L. Ed. 456; Roa v. Collector of Customs, (1912) 23 Phil. 315, 336.

[48] See U. S. v. Cruickshank, (1876) 92 U. S. 542, 23 L. Ed. 588.

[49] See Fuller, C.J., in Boyd v. Thayer, (1892) 143 U. S. 135, 36 L. Ed. 103; III Moore, International Law Digest, pp. 311-318. Whether a treaty could constitutionally add to the members of the union has never been decided by the courts. In the debate on the Louisiana purchase, it was contended that the Constitution did not vest such power in the President and the Senate. Annals of Congress, 1803, pp. 432 *et seq.*; Magoon's Reports, pp. 123 *et seq.* Whether birth in the Philippines *after* the treaty makes one a citizen is also unsettled.

[50] White, J., in Downes v. Bidwell, (1901) 182 U. S. at p. 280, 45 L. Ed. 1103.

[51] Act of Congress, July 1, 1902, § 4, and Act of Congress, March 23, 1912. Executive Order No. 32, series of 1904, by the Governor-General relating to passports makes the same distinction.

[52] U. S. v. Wong Kim Ark, (1898) 169 U. S. 649, 42 L. Ed. 890.

With this definition of citizenship and these fundamental conceptions in mind, one is not surprised to find all authorities holding that the inhabitants of Porto Rico and the Philippines are not citizens of the United States.[53]

Are the Filipinos subjects of the United States? The word "subject" was discarded upon the separation of the States from Great Britain as not suited to one living under a republican form of government.[54] It describes a servile relationship which is not true of actual conditions.

If not an alien, if not a citizen of the United States, and if not a subject of the United States, the Filipino would seem to be a man without status. Not so. Beginning anew, "citizen" in international law may have a broad significance.[55] In the course of an elaborate opinion for the American minister resident in Siam, Attorney-General ARANETA explains this idea as follows:

> "It logically follows from what has been said, that if by 'citizen' we mean 'a member of the civil state, entitled to all its privileges,' the inhabitants of the Philippine Islands are not citizens of the United States, for even in the treaty it is provided that 'the civil rights and political status * * * shall be determined by the Congress' (Art. IX), and Congress has, in conformity with this provision, expressly declared them to be citizens of the Philippine Islands. Nor do they fulfill the requirements of the fourteenth amendment to the Constitution, for while they are subject to the juris-

[53] Attorney-General Griggs says that "the undisputed attitude of the executive and legislative departments of the Government has been and is that the native inhabitants of Porto Rico and the Philippine Islands did not become citizens of the United States by virtue of the cession of the Islands by Spain by means of the Treaty of Paris." 23 Op. Atty. Gen. U. S. 370. Also 23 Op. Atty. Gen. U. S. 400; 25 Op. Atty. Gen. U. S. 179; 3 Op. Atty. Gen. P. I. 292; 5 Op. Atty. Gen. P. I. 144; Magoon's Reports, pp. 60, 61; Mr. Hay, Secretary of State, III Moore, Int. Law Digest, pp. 316-318; Tan Te v. Bell, (1914) 27 Phil. 354.

[54] Waite, C.J., in Minor v. Happersett, (1875) 21 Wall. 162, 165, 166, 22 L. Ed. 627; White v. Clements, (1896) 39 Ga. 232. "In one sense, the term sovereign, has for its correlative, subject. In this sense, the term can receive no application; for it has no object in the Constitution of the United States. Under that constitution there are citizens, but no subjects. 'Citizens of the United States.' 'Citizens of another state,' 'Citizens of different states.' 'A state or citizen thereof.' The term, subject, occurs, indeed, once in the instrument; but to mark the contrast strongly, the epithet 'foreign' is prefixed." Chisholm v. Georgia, (1793) 2 Dall. 419, 456, 1 L. Ed. 440. But Arellano, C. J., in In re Bosque, (1902) 1 Phil. 88 (possibly because of the then uncertain status) and Rule 38 of the U. S. Chinese Regulations of February 5, 1906, make use of the word "subject."

[55] Waite, C. J., in Minor v. Happersett, *Id.;* Fuller, C. J., in Boyd v. Thayer, (1892) 143 U. S. 135, 36 L. Ed. 103.

diction of the United States they are not 'persons born or naturalized in the United States.'

"If by 'citizen' is meant one who owes allegiance to the United States in return for the protection which that Government affords him, then the inhabitants of these Islands are citizens of the United States. That they are entitled to call upon the United States to protect them in their rights of property and person, preserve the public peace, maintain law and order, and prevent encroachments upon the territory by foreign nations can not be denied. Correlatively, the inhabitants owe allegiance to the sovereignty and obedience to the laws whereby the sovereignty undertakes to discharge the obligation.

"While it is clear, therefore, that the inhabitants of these Islands are not citizens of the United States in respect to the rights, privileges, and immunities guaranteed by the Constitution to the citizens of the several States of the American Union, it is also equally clear that they are citizens of the United States in an international sense, and as such are entitled as of right to the protection of the United States in their rights of property and person, whether at home or in foreign lands."[56]

Congress has legislatively classified the inhabitants of Porto Rico and the Philippines as "persons not citizens" but who "owe permanent allegiance to the United States."[57] To avoid needless confusion, Frederick R. COUDERT, John Basset MOORE and others have suggested the comprehensive word "national," to designate the status of one not an alien and yet not a full citizen—a position somewhat akin to the common law principle of English nationality

[56] 3 Op. Atty. Gen. P. I. 292, 295, citing at length Van Dyne, Citizenship of the United States, pp. 229, 230. For purposes of suit it "has been the uniform practice" of the Federal Court for Porto Rico, to consider a citizen of Porto Rico as a citizen of the United States. See Gonzalez v. Izaguirre, (1913) 6 Porto Rico Fed. 222. "The inhabitants of Porto Rico and the Philippine Islands, other than those who were subjects of Spain at the date of the treaty of peace of December 10, 1898, and who elected to retain their allegiance of nativity, obtained the *international* status of citizens of the United States in the operation of that instrument. They did not become citizens of the United States, however, within the meaning of the Constitution, and, until their status in that regard has been established by Congress, they will continue to occupy the anomalous condition of citizens of Porto Rico and the Philippine Islands." Davis, Elements of International Law, 3rd Ed., p. 141. An opinion of the Attorney-General of the United States has held a native Porto Rican to be "an American." 24 Op. Atty. Gen. U. S. 40. John S. Wise, Citizenship, Ch. I, would denominate the situation of such persons as "qualified citizenship."

[57] Act of Congress, June 29, 1906, § 30.

—birth within the ligealty of the King. The distinction then becomes one between aliens and nationals, the latter including citizens. Mr. COUDERT says: "National would include all persons owing allegiance to the United States and exclude all persons owing allegiance to any other power. It is the co-relative of alien, and the two together are universally inclusive. A national is one who owes allegiance to any State, whatever its form of government. All citizens must be nationals, but all nationals may not be citizens."[58]

As bearing out such a thesis, two things are certain—the Filipinos owe allegiance[59] to the United States; the Filipinos are entitled to the same protection[60] as citizens of the United States. "Allegiance and protection are, in this connection, reciprocal obligations. The one is compensation for the other—allegiance for protection and protection for allegiance."[61] The United States can demand obedience to such laws as are enacted for the Philippines. She could ask for the aid of Filipinos in case of need. Reciprocally, the inhabitants of the Philippines are entitled to protection from the United States in their rights of property and person, for the preservation of the public peace, for the maintenance of law and order, and for the prevention of encroachment upon the territory by foreign nations;[62] passports are issued to them;[63] and when residing abroad, they can call upon American consuls and diplomatic rep-

[58] Coudert, Certainty and Justice, p. 136. Same author, Our New Peoples: Citizens, Subjects, Nationals, or Aliens, III Columbia Law Review, Jan., 1903, p. 13; MacClintock, Aliens under the Federal Laws of the United States, Ill. Law Review, (1909) p. 493; Moore, Int, L. Dig. § 372. "The general terms 'alien,' 'citizen,' 'subject,' are not absolutely inclusive, or completely comprehensive." Gonzalez v. Williams, (1904) 192 U. S. 1, 48 L. Ed. 317.

[59] The Supreme Court of the Phipippines makes this distinction in allegiance: "The Philippine Islands is and has been since the passage of said Act (July 1, 1902), completely under the control of the Congress of the United States and all the inhabitants owe complete and full allegiance or a qualified temporary allegiance, as the case may be, to the United States." Roa v. Collector of Customs, (1912) 23 Phil. 315, 317.

[60] Mr. Hay, Sec. of State, III Moore, Int. L. Dig., pp. 316, 317; Mr. Hill, Acting Sec. of State, Id.; Gonzalez v. Williams, Id.

[61] Waite, C. J., in Minor v. Happersett, (1875) 21 Wall. 162, 165, 22 L. Ed. 627.

[62] Magoon's Reports, p. 61.

[63] The Revised Statutes of the United States, § 4,076, prohibits the granting or verification of passports to and for any person other than citizens of the United States. The Act of June 14, 1902, amended this section so as to make it read: "No passports shall be granted or issued to or verified for any persons than those owing allegiance, whether citizens or not, to the United States." See 5 Op. Atty. Gen. P. I. 144. Paragraph 9 of Executive Order No. 32, series of 1904, reads: "In addition to the statements required by rule three, he must state that he owes allegiance to the United States and that he does not acknowledge allegiance to any other government; and must submit an affidavit from at least two credible witnesses having good means of knowledge in substantiation of his statements of birth, residence, and loyalty."

resentatives for assistance and can receive the benefits of treaties between the United States and foreign countries. The amnesty proclamation expressly recognizes the obligation of allegiance to the United States. The Philippine Bill expressly confirmed the corresponding right to the protection of the United States. And the United States Supreme Court solemnly stated that "their [the native inhabitants'] allegiance became due to the United States, and they became entitled to its protection."[64]

The Filipinos are not aliens, or subjects, or citizens of the United States. They are citizens of the Philippine Islands. They are also American nationals owing allegiance to the United States and entitled to its protection.

STATUS STATED.

The subject is one not free from doubt. Some comprehend its complexities. Still fewer undertake its solution. But the previous discussion should leave us in a position to determine exactly the present status of the Philippine Islands and their inhabitants.

From a negative standpoint the Philippines occupy a relation to the United States different from that of other non-contiguous territory; not a foreign country; not sovereign or semi-sovereign; not a State or an organized, incorporated territory; not a part of the United States in a domestic sense; not under the Constitution, except as it operates on the President and Congress; and not a colony. The Filipinos are neither aliens, subjects, nor citizens of the United States.

THE PHILIPPINES ARE A DEPENDENCY—AN UNINCORPORATED TERRITORY BELONGING TO THE UNITED STATES AND UNDER ITS COMPLETE SOVEREIGNTY—A PART OF THE UNITED STATES IN AN INTERNATIONAL SENSE.

Officially, the Philippines are usually spoken of as an insular possession. From another view the Philippines are a complete governmental organism with the form and organization of a State or Territory. It is the legal creation and agent of Congress, which, for administrative purposes, has placed the Philippine Government under the supervision of the President, making it a branch of the War Department.

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[64] The Diamond Rings, (1901) 183 U. S. 176, 46 L. Ed. 138.

THE FILIPINOS ARE CITIZENS OF THE PHILIPPINE ISLANDS AND AMERICAN NATIONALS OWING ALLEGIANCE TO THE UNITED STATES AND UNDER THE PROTECTION OF THE UNITED STATES.

If these statements were put in parallel columns, the anomalous status of the Philippine Islands and its people would be graphically portrayed. As one keen observer has said, the Government of the Philippine Islands is a Government foreign to the United States for domestic purposes, but domestic for foreign purposes—a position midway between that of being foreign territory absolutely and domestic territory absolutely.

The status of the Philippines, moreover, is temporary and changing.[65]

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[65] Act of Congress of July 1, 1902, the Philippine Bill, is entitled, "An Act *temporarily* to provide for the administration of the affairs of Civil Government in the Philippine Islands, and for other purposes." See Downes v. Bidwell, (1901) 182 U. S. 244, 283, 45 L. Ed. 1088, 1105.